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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,942	03/30/2004	Bret Selby	13839-1	7922

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,942

Applicant(s)

SELBY, BRET

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/30/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,8,10,11,14,16,17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decure (WO 89/08063) in view of Kawaguchi (3,685,645), further in view of Rich (3,693,868), Foster (3,954,220), Fellers (6,398,071), and Doar (4,151,910).

In regard to claim 1, Decure discloses a food apparatus for containing a food product in a first section of the apparatus and a second section capable of receiving and retaining waste from the food product wherein the food package apparatus comprises a food product containing section comprising a first front panel and an opposite back panel and a peripheral edge, defining the first compartment and a food product disposed in the first compartment, and a waste collection section comprising front and back panels and a peripheral edge, defining a waste collection section having a second compartment, and the food product section and the waste collection section having separate access. See in this regard fig. 2d of Decure. Claim 1 recites that the apparatus has a perforated attachment means for hingedly connecting the top of the food product containing section to the top of the waste collection section, so that the two sections are capable of being detached. It is not clear from the drawings how the compartments of Decure are attached, except that they are end-to-end as are applicants compartments. The Office will attempt to obtain a complete translation of Decure. In any case, as

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evidenced by Kawaguchi, it was notoriously conventional in the art to provide compartmented packaging, wherein the compartments are arranged end-to-end, and is provided with a perforated section, which allows the compartments to be hingedly connected and detachable so that the compartments are accessible when the compartments are detached. To modify Decure and provide perforations to allow the compartments to be detachable and accessible for its art recognized and applicants intended function would therefore have been obvious. Rich, Foster, Fellers, and Doar are relied on as further evidence of the conventionality of packaging for a product and a compartment for the waste associated with the product. In regard to claims 2 and 3 which recite that the product is sunflower seeds and pistachios, respectively, once it was known to provide a product compartment and a reuse compartment for a food product that has a discardable shell such as the peanuts taught by Decure, the particular conventional product with discardable portion one chooses to package would have been an obvious matter of choice. Decure is seen to be a generic teaching, not limited to peanuts. In any case, Fellers discloses sunflower seeds and pistachio nuts in a compartmented package for containing the discard and to modify Decure and substitute one food product for another would therefore have been obvious. In regard to claim 4, Decure discloses rectangular panels. Claim 5 recites that the waste collection section has a collapsible bottom. The bottom of any flexible bag is capable of being collapsible. In any case, Rich, who also discloses a bag apparatus that provides one compartment for the product and a second compartment for the discards of the product, discloses a discard compartment with a bottom capable of collapsing (and of course,

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rectangular walls). To modify Decure, if necessary, and provide the compartment with the capability of collapsing for its art recognized and applicants intended function, would therefore have been obvious. In regard to claim 8, which recites that the packaging is a food grade packaging paper, it is not clear what conventional material of construction Decure employs. In any case, Rich discloses paper (col.1, para. 3) and to modify Decure, if necessary, and substitute one conventional material of construction for another conventional material of construction for its art recognized and applicants intended function would therefore have been obvious. Claims 8,10,11,14,16,17 and 18 are rejected for the reasons given above.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-5,8,10,11,14,16,17 and 18 above, and further in view of Kehr (2,279,327).

Claim 9 recites that the paper is wax paper. As evidenced by Kehr; wax paper is, of course, a notoriously conventional material of construction for packaging, including nuts. To modify the combination and substitute one conventional material of construction for another conventional material of construction for its art recognized and applicants intended function is seen to have been obvious.

Claims 6,7,12,13,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-5,8,10,11,14,16,17 and 18, above, and further in view of Mullins (3,294,312), Ragan et al (3,185,384), Balcom (3,212,698), Anderson (2,481,380), Stevens (398,908), (4,082,216), Orstrom (2,070,747), Baxter (3,099,384), Crary (2,603,409).

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Claims 6 and 7 recite that the bottom has a rectangular base and triangular flaps, which flaps are capable of being folded against the base and wherein the flaps have adhesive means capable of retaining the flaps to the base. As evidenced by Mullins, Ragan et al Balcolm, Anderson, Stevens, Orstrom, Baxter and Crary, the art taken as a whole teaches that rectangular bag bottoms, triangular flaps, and even adhesive on flaps and/or panels are well established bag making expedients and to modify the combination and employ the conventional structure and the conventional means to impart to the flaps the capability of retaining the flaps on the base for its art recognized and applicants intended function would therefore have been obvious. Claims 12,13,19 and 20 are rejected for the reasons given above.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 13 above, and further in view of Kehr who is applied for the reasons given above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER
12/7/06